

Subpart D—Scope of Competition

§ 351.401 Determining retention standing.

Each agency shall determine the retention standing of each competing employee on the basis of the factors in this subpart and in subpart E of this part.

§ 351.402 Competitive area.

(a) Each agency shall establish competitive areas in which employees compete for retention under this part.

(b) A competitive area must be defined solely in terms of the agency's organizational unit(s) and geographical location and, except as provided in paragraph (e) of this section, it must include all employees within the competitive area so defined. A competitive area may consist of all or part of an agency. The minimum competitive area is a subdivision of the agency under separate administration within the local commuting area.

(c) When a competitive area will be in effect less than 90 days prior to the effective date of a reduction in force, a description of the competitive area shall be submitted to the OPM for approval in advance of the reduction in force. Descriptions of all competitive areas must be made readily available for review.

(d) Each agency shall establish a separate competitive area for each Inspector General activity established under authority of the Inspector General Act of 1978, Public Law 95–452, as amended, in which only employees of that office shall compete for retention under this part.

(e) When an agency finds that a competitive area defined under paragraph (b) of this section includes pay band positions and positions not covered by a pay band, the agency may, at its discretion, define a separate (and additional) competitive area, otherwise consistent with paragraph (b) of this section, to include only pay band positions. The original competitive area would then include only the remaining positions (*i.e.*, those positions not covered by a pay band).

[51 FR 319 Jan. 3, 1986, as amended at 56 FR 65416, Dec. 17, 1991; 62 FR 62500, Nov. 24, 1997; 73 FR 46532, Aug. 11, 2008]

§ 351.403 Competitive level.

(a)(1) Each agency shall establish competitive levels consisting of all positions in a competitive area which are in the same grade (or occupational level) and classification series, and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that an agency may reassign the incumbent of one position to any of the other positions in the level without undue interruption.

(2)(i) Except as provided in paragraph (a)(2)(ii) of this section for pay band positions, competitive level determinations are based on each employee's official position of record (including the official position description), not the employee's personal qualifications.

(ii) To establish a competitive level comprised of pay band positions, an agency may supplement an employee's official position of record with other applicable records that document the employee's actual duties and responsibilities.

(3) Sex may not be the basis for a competitive level determination, except for a position OPM designates that certification of eligibles by sex is justified.

(4) A probationary period required by subpart I of part 315 of this chapter for initial appointment to a supervisory or managerial position is not a basis for establishing a separate competitive level.

(5) If a competitive area includes positions in one or more pay bands, each set of interchangeable positions in the pay band under paragraphs (a)(1) through (4) of this section is a separate competitive level (*e.g.*, with interchangeable positions under paragraphs (a)(1) through (4) of this section, each pay band is one competitive level; if the positions are not interchangeable under paragraphs (a)(1) through (4) of this section, the pay band may include multiple competitive levels).

(b) Each agency shall establish separate competitive levels according to the following categories:

(1) *By service.* Separate levels shall be established for positions in the competitive service and in the excepted service.